

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 99-CV-2496 (GK)
v.)	
)	Next Scheduled Court Appearance: None
PHILIP MORRIS, INCORPORATED,)	
et al.,)	
)	
Defendants.)	

**RESPONSE OF R. J. REYNOLDS TOBACCO COMPANY TO PLAINTIFF
UNITED STATES' FIRST SET OF INTERROGATORIES**

R. J. Reynolds Tobacco Company ("Reynolds") hereby responds to the Plaintiff United States' First Set of Interrogatories To Defendants ("Plaintiff's Interrogatories"). Reynolds responds pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP"), the Eighth Case Management Order (dated November 17, 2000) and Court Order No. 39 (dated December 1, 2000).

I. GENERAL RESPONSES AND RECURRING OBJECTIONS

Without waiving its specific objections as to any of the Plaintiff's individual Interrogatories, Reynolds makes the following General Responses and Recurring Objections to Plaintiff's Interrogatories. Reynolds' General Responses and Recurring Objections are incorporated, as appropriate, into its response to each Interrogatory.

Reynolds' General Responses and Recurring Objections and its response to each

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Interrogatory are made with the understanding that the parties will engage in meet-and-confers to resolve disputes regarding Plaintiff's Interrogatories and Reynolds' Responses. To facilitate the meet-and-confer process, Reynolds sets forth as clearly as possible its objections and the information it provides. Reynolds further states that in some instances it is searching for additional responsive information and, if and when it locates such information, will supplement the applicable response(s). Reynolds adds, however, that many of Plaintiff's Interrogatories are so broad in subject matter and time period that providing detailed responses, if possible at all, would require extraordinarily time-consuming and burdensome inquiries and analyses that can not be justified, particularly in light of the unprecedented volume of information already made available to Plaintiff in this case.

A. Documents Already Available To Plaintiff

Much of the information sought by Plaintiff through these interrogatories has been available to Plaintiff for many months, including time periods pre-dating the filing of Plaintiff's Complaint. For over five years, Reynolds, and the other Defendants in this case, have been producing documents to the Minnesota depository that was established by court order in State of Minnesota, et al. v. Philip Morris, Inc. et al., State of Minnesota, County of Ramsey, District Court, Second Judicial District, Court file No. C1-94-8565. As of the end of December 2000, Reynolds produced more than 7 million pages of documents (approximately 800,000 documents) to the Minnesota depository. Reynolds also has provided to the Minnesota depository, in a computer searchable format, a comprehensive privilege log to documents that have been withheld from the depository or redacted on the grounds of privilege. The Minnesota depository has been open to the public for well over two years and accordingly available to Plaintiff and its

counsel. Nearly all of the documents produced to the Minnesota depository also have been posted to Reynolds' document website at www.rjtdocs.com (also accessible at www.tobaccoarchives.com). Documents produced to the Minnesota depository and posted to Reynolds' document website are identified on computer searchable indices that are available to Plaintiff. Reynolds' document website index permits searches of over 30 separate fields of information for each document. The documents produced and posted by Reynolds contain an enormous volume of information related to smoking and health matters for time periods of nearly fifty years.

Plaintiff not only has had access to the Reynolds' documents described in the preceding paragraph, but also, pursuant to the Sixth Case Management Order, paragraph 6, has had a copy of Reynolds' document website (document images and index data) on data tapes. Reynolds initially provided those data tapes on August 16, 2000 and provided a replacement set of tapes, with updated images and index data, on October 2, 2000. Reynolds has further agreed to confer with Plaintiff about a process for periodically updating those data tapes.

Reynolds also has provided or produced a substantial quantity of information sought by Plaintiff in this case. On January 10, 2000, Reynolds provided, among other things, company organizational charts, a listing of insurance policies, and a listing of depositions of Reynolds' employees and expert witnesses, the transcripts of and exhibits to which are on Reynolds' document website. On May 29, 2000, Reynolds provided to Plaintiff information memorializing the locations searched by Reynolds for potentially responsive documents and analyzing its production to the Minnesota depository. Reynolds has produced over one million pages of documents (on computer disk and with indices) in response to Plaintiff's Preliminary Requests

for Production, and Reynolds' completed production to Plaintiff's Preliminary Requests will constitute about two million pages of documents. Reynolds also anticipates producing several millions of pages of documents in response to Plaintiff's Comprehensive Requests for Production. Reynolds is producing documents in this case in image format with an index equivalent to that on its document website.

In sum, Reynolds has provided or made available to Plaintiff literally an unprecedented quantity of documents and the means to search and organize those documents. Plaintiff nonetheless continues to propound broad discovery that purports to require Reynolds to sort through information already made available, extract and segregate portions of the information, and place the information in categories devised by Plaintiff, thereby imposing substantial and unjustifiable burdens on Reynolds. Furthermore, Plaintiff's discovery is contrary to an orderly process that reasonably proceeds from the identification of broad categories of information to the discovery of more particular, material information.

B. References to Documents and Document Production Requests

In response to many of Plaintiff's Interrogatories, Reynolds refers Plaintiff to documents it has produced to the Minnesota depository, to Reynolds document website, and on data tapes produced to Plaintiff and provides information that permits Plaintiff to search for those documents. Where feasible, Reynolds also has agreed to provide document number lists for documents that it has provided or produced and that contain information responsive to the interrogatory. In response to other interrogatories, Reynolds refers Plaintiff to specific numbers of Plaintiff's Comprehensive Requests for Production to which Reynolds has produced or will produce documents and that call for the same information as the interrogatory.

C. Lack of Particularity

Plaintiff is positioned to propound narrowly crafted, particular interrogatories but has not done so here. See Paragraph A, supra. To the contrary, Plaintiff has propounded interrogatories that encompass broadly defined subject matters and time periods of nearly fifty years. Reynolds accordingly objects to Plaintiff's Interrogatories on the ground that the interrogatories lack reasonable particularity, a deficiency that is made more unacceptable in light of the enormous volume of information made available to Plaintiff.

D. Overbreadth and Burden

Reynolds objects to Plaintiff's First Set of Interrogatories in its entirety on the grounds that it is overly broad, unduly burdensome, and oppressive to the extent it purports to impose upon Reynolds the burden of engaging in massive new or duplicative efforts to gather information when available sources exist. As stated above, Reynolds has produced and made available over seven million pages of documents at the depository and at www.rjtdocs.com. Plaintiff already has access to much of (if not all) the information it seeks to have Reynolds provide. Requiring Reynolds to search for and provide information that is currently accessible to Plaintiff constitutes an unjustifiable burden with no commensurate benefit to Plaintiff. Therefore, Reynolds objects to these interrogatories to the extent they seek information contained in these currently available sources, particularly where the burden of obtaining that information is substantially the same for the Plaintiff as it is for Reynolds.

Plaintiff propounds its interrogatories as if the interrogatories concern a single identified time or time period. But that is not the case. The subject matter of most of the interrogatories is extremely broad and the time period often encompasses fifty or more years. Such interrogatories

are not susceptible to the detailed responses Plaintiff demands.

Reynolds specifically objects to each individual interrogatory that requests information on "Each Person" on the grounds that it purports to impose a massive and indefensible burden on Reynolds far beyond that contemplated by the discovery provisions of the FRCP. Based on Plaintiff's definitions of "Each" and "Person," Reynolds would be required to identify every person and/or entity for a time period of nearly fifty years who has any knowledge of or was involved in any way with the subject matter of the particular interrogatory without regard for the type of information the person or entity possesses, the amount of involvement of the person or entity, or the relevance and materiality of their information or involvement.

E. Relevance

The undue burden of Plaintiff's First Set of Interrogatories is increased because many of the interrogatories seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. For example, Interrogatory No. 5 calls for the identification of "each person" with "personal knowledge" of Reynolds "cigarette manufacturing process" from 1950 to the present. There are no claims in this case that Reynolds negligently manufactured cigarettes. The information Plaintiff seeks is simply not relevant to the subject matter of this case nor reasonably calculated to lead to the discovery of admissible evidence; the collection of such information, if possible at all, would, however, impose a very substantial burden on Reynolds.

F. Plaintiff's Instructions

Reynolds objects to Plaintiff's Instructions to the extent that Plaintiff seeks to impose obligations upon Reynolds that are different from and/or in addition to those imposed by the

FRCP. Reynolds further objects to Plaintiff's Instructions to the extent the instructions are vague, ambiguous, overly broad, unduly burdensome, oppressive and designed to obtain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Reynolds specifically, but not exclusively, objects to the following instructions set forth in Plaintiff's Interrogatories:

1. Instruction No. 1

Reynolds objects to Plaintiff's instruction to the extent it purports to require Reynolds to provide information from third parties (e.g., "affiliates," "joint ventures," "employees," "agents," "subcontractors," and "any and all other persons"). The instruction, as written, is overly broad and unduly burdensome. Reynolds does not have the obligation or the information to answer for or speculate as to the knowledge or information possessed by third parties. Reynolds will answer the interrogatories based on the information reasonably available to Reynolds and will fulfill its obligations pursuant to FRCP Rules 26 and 33.

2. Instruction No. 4

Reynolds objects to Plaintiff's Instruction on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It would be impossible for Reynolds to attempt to identify or list each and every routine disposition of a document (or copy of a document) undertaken pursuant to company document retention policies. As written, Plaintiff's instruction would require Reynolds to undertake inquiries of potentially thousands of current and

former employees, among others, to determine whether they had ever disposed of any documents or copies of documents pertaining to the subject matter of Plaintiff's interrogatory. Such an undertaking would be largely fruitless and impose a wholly unjustified burden on Reynolds.

3. Instruction No. 5

Reynolds objects to Plaintiff's Instruction on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It would be impossible for Reynolds to comply with the instruction as written, because the instruction purports to require Reynolds to provide "each and every fact, circumstance, condition, and thing known" about broadly identified subject matters of the interrogatory without regard to the relevance or materiality of that information. Furthermore, the instruction purports to require Reynolds to list "each Person having personal knowledge of each document" "related to" the subject matter of the interrogatory. This requirement is extraordinarily over broad and imposes an unjustifiable burden if it could be complied with at all.

4. Instruction No. 6

Reynolds objects to this entire instruction and each individual interrogatory using this instruction to the extent it purports to require Reynolds to provide information about other parties and entities. This instruction is grossly over broad and oppressive and would require Reynolds to conduct extensive inquiries about the activities of "unrelated companies and entities (and their

employees and officers)." Furthermore, the instruction is ambiguous as to the term "activities." Reynolds does not have the obligation or the information to provide information that is possessed by such entities.

G. Plaintiff's Definitions

Reynolds objects to Plaintiff's Definitions contained in the interrogatories to the extent that they seek to impose obligations upon Reynolds that are different from and/or in addition to those imposed by the FRCP. Reynolds further objects to Plaintiff's Definitions to the extent they are vague, ambiguous, overly broad, unduly burdensome, oppressive and designed to obtain information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Reynolds objects specifically, but not exclusively, to the following definitions set forth in Plaintiff's Interrogatories:

1. Definition No. 1

Plaintiff defines the term "Addiction" so broadly as to include five different terms -- "addiction, habituation, dependence, tolerance, or withdrawal" -- each of which has distinct and separate, and often multiple, meanings. Plaintiff's definition of "Addiction" and the terms used to purport to define "Addiction" are vague, ambiguous and over broad.

2. Definition No. 5

Plaintiff's definition of "Document" is overly broad and unduly burdensome. Reynolds objects specifically, but not exclusively, to Plaintiff's inclusion of "every copy," "drafts," and "proposed drafts" in the definition.

3. Definition No. 7

Plaintiff's definition of "Identity" and "Identify" an "oral communication" is extremely over broad and not crafted to obtain information that is reasonably calculated to lead to the discovery of admissible evidence. Reynolds objects specifically, but not exclusively, to subsections (b) and (c) which would require Reynolds to identify every person who overheard the communication. Furthermore, subsection (f) is vague and ambiguous as to the meaning of "referring or related to" and unduly burdensome and oppressive to the extent it purports to require Reynolds to identify each telephone bill, or similar document, for every conversation dealing with the subject matter of the interrogatories.

4. Definition No. 8

Plaintiff's definition of "Identity" and "Identify" a "Document" is unduly burdensome and oppressive. Specifically, subsections (a), (b), (c), (d), and (e) would require Reynolds to describe with particularity the substance of each document and identify every person who had anything to do with the document. Plaintiff's definition purports to place a duty upon Reynolds that is beyond the requirements of the FRCP. The substance of a document speaks for itself. Reynolds will, when applicable and feasible, identify records from which the answer to the interrogatory may be derived or ascertained in accordance with Rule 33(d) of the FRCP.

5. Definition No. 9

Plaintiff's definition of "Identity" and "Identify" "each course of action or

conduct referred to" is grossly over broad and oppressive. Plaintiff's definition also would require Reynolds to identify every person who had anything at all to do with the subject matter of the interrogatory. It is unreasonable, if possible at all, for Reynolds to comply with the purported requirements of this definition.

6. Definition No. 12

Reynolds objects to Plaintiff's definition of "less hazardous cigarette" on the grounds of overbreadth, vagueness, and ambiguity particularly in the use of the phrase "was considered to possibly, reduce of the health risks or health consequences of smoking." As written, the phrase does not identify who "considered" and, therefore, would require to Reynolds to speculate or conduct extensive inquiries to ascertain whether any entity or person "considered" that a given experimental or marketed cigarette product might possibly "reduce the health risks or health consequences of smoking."

7. Definition No. 13

Reynolds objects to Plaintiff's definition of "marketing" on the grounds that it is over broad and ambiguous in its use of the phrases "all activities relating to cigarettes" and "likely to be seen or heard by members of the public." Adding to the ambiguity and confusion, is the fact that in the first sentence of the definition Plaintiff expressly includes "advertising," whereas, in the second sentence, subsection (e), Plaintiff expressly excludes "advertising" thereby rendering the definition contradictory if not incomprehensible.

8. Definition No. 17

Plaintiff's definition of "You," "Your," "Your Company," or "Your Organization" is grossly over broad in encompassing entities over which Reynolds "exercised . . . any influence." Furthermore, Reynolds objects to Plaintiff including "attorneys" and "consultants" in this definition on the ground that the information possessed by attorneys and consultants may be privileged or otherwise protected.

H. Advertising, Marketing and Promotion: Preemption

Reynolds objects to Plaintiff's Interrogatories to the extent that they seek information regarding Reynolds' advertising and promotional practices and activities after July 1, 1969. In Cipollone v. Liggett Group, Inc., 505 U.S. 504(1992), the United States Supreme Court held to be preempted, among other things, claims based on the ordinary advertising or promotion of cigarettes, the packages of which are labeled in accordance with federal law, as well as claims alleging failure to warn and claims alleging that cigarette advertising or promotion "neutralized the effect of the federally mandated warning labels." Id. at 505 U.S. 527. Discovery that relates only to claims that Plaintiff may not as a matter of law pursue seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

I. Privileged and Otherwise Protected Information

Plaintiff's Interrogatories do not, by their terms, exclude privileged or otherwise protected information from the information sought. Reynolds objects to each interrogatory to the extent that it seeks the disclosure of any information that is privileged or protected for any reason, including information protected by the attorney-client privilege, the work product doctrine, the

joint defense/joint interest privilege, and/or any other applicable privilege or protection.

**J. Trade Secrets and Other Confidential,
Proprietary Business Information**

Reynolds objects to Plaintiff's Interrogatories to the extent that they seek trade secrets or other confidential or proprietary research, development, or commercial information without any showing of need -- much less compelling need -- for such information. Any offer to provide information containing confidential or trade secret information in this action is and will be conditioned upon the protective order and the addendum to the protective order entered in this case.

II. RESPONSES TO INTERROGATORIES

Subject to and without waiving its recurring objections, which are incorporated by reference into the responses to the individual interrogatories, as appropriate, or its objections to particular interrogatories, Reynolds responds to Plaintiff's Interrogatories as follows:

INTERROGATORY NO. 1: Identify each Person who supplied information You used in answering these interrogatories and, as to each such Person, state the information that Person supplied from personal knowledge.

RESPONSE:

Reynolds states that the responses to these interrogatories were prepared by legal counsel for Reynolds from information and documents collected from numerous sources, including Reynolds, and verified in accordance with the Federal Rules of Civil Procedure by Thomas R. Adams, 401 N. Main St., Winston-Salem, NC 27102.

RECEIVED
 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS INCORPORATED,
et al.,

Defendants.

TOBACCO LITIGATION TEAM

Civil Action No. 99-CV-2496 (GK)

Next Scheduled Court Appearance:
 July 18, 2002

**DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S
 RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION TO ALL DEFENDANTS**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure ("FRCP")

and in accordance with Order #51 of the Court, Defendant R.J. Reynolds Tobacco Company ("Reynolds"), by and through its counsel, hereby responds to Plaintiff's First Set of Requests for Admission ("Plaintiff's Requests").

I. RECURRING OBJECTIONS

A. Plaintiff's Instructions & Definitions

Reynolds objects to Plaintiff's Instructions and Definitions to the extent that Plaintiff seeks to impose obligations upon Reynolds that are different from and/or in addition to those imposed by the FRCP. Reynolds further objects to Plaintiff's Instructions and Definitions to the extent the instructions are vague, ambiguous, overly broad, unduly burdensome, oppressive and designed to obtain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Reynolds specifically,

but not exclusively, objects to the following instructions and definitions set forth in Plaintiff's Requests:

1. Instruction No. 1:

Reynolds objects to this instruction to the extent it purports to require Reynolds to provide an admission concerning information related to other defendants in this action. Several of Plaintiff's Requests relate specifically to certain defendants in this action. Reynolds does not have the obligation or the information to answer for or speculate as to the knowledge or information possessed by third parties. Reynolds responds to the requests based on reasonable inquiry and the information reasonably available to Reynolds and pursuant to its obligations pursuant to FRCP Rules 26 and 36.

2. Instruction No. 5:

Reynolds objects to this instruction to the extent it purports to require Reynolds to provide an admission concerning information related to time periods after December 31, 2001 on the ground that it is overly broad. In accordance with Court Order No. 51, December 31, 2001 was established as the cut-off date for all written discovery in this litigation. Unless otherwise indicated, Reynolds' responses to Plaintiff's Requests relate to the date set forth in each request, if any, through December 31, 2001.

3. Definition No. 2:

Plaintiff fails to define "addiction" and "addictive" other than to state that the terms include "dependence" and "dependence producing," respectively. Reynolds objects to Plaintiff's definition of the terms "addiction," "addictive,"

"dependence," and "dependence producing," as used by Plaintiff, on the grounds of vagueness and ambiguity.

4. Definition No. 3:

Reynolds objects to this definition on the ground that it purports to seek admissions beyond the reasonable scope of the requests. This definition, as written, allows Plaintiff to avoid drafting narrowly tailored requests or to inappropriately broaden an otherwise narrowly tailored request by inserting the terms "any" or "all."

5. Definition No. 8:

Reynolds objects to Plaintiff's definition of "less hazardous cigarette" on the grounds of overbreadth, vagueness, and ambiguity particularly in the use of the phrase "was considered to possibly, [to] reduce the health risks or health consequences of cigarette smoking." As written, the phrase does not identify who "considered" and, therefore, would require Reynolds to speculate or conduct extensive inquiries to ascertain whether any entity or person considered" that a given experimental or marketed cigarette product might possibly "reduce the health risks or health consequences of cigarette smoking."

6. Definition No. 14:

Plaintiff's definition of "You," "Your," "Your Company," or "Your Organization" is over broad in encompassing entities over which Reynolds "exercised . . . any influence."

B. Privileged and Otherwise Protected Information

Reynolds objects to each request to the extent it seeks an admission that would require the disclosure of information that is privileged or protected for any reason, including information protected by the attorney-client privilege, the work product doctrine, the joint defense or joint interest privilege, and/or any other applicable privilege or protection.

C. Compound and Multiple Matters

Several of Plaintiff's Requests include implied assertions or conclusions that, as framed, purport to require Reynolds to admit or deny the express substance of the request and to further admit or deny one or more of Plaintiff's underlying assumptions, assertions or conclusions -- for which Plaintiff provides no support or authority. Reynolds objects to such requests on the grounds that they violate Rule 36 of the Federal Rules of Civil Procedure in failing to separately set forth the matter for which an admission is sought and, because such requests are inherently burdensome and confusing, any response to such requests would be subject to misinterpretation.

D. Time Periods

Reynolds objects to those requests that cover extensive time periods -- some forty or more years -- on the grounds that such requests lack particularity and are overly broad and unduly burdensome in that the requests purport to require Reynolds to make extensive inquiries of older records.